IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.181 OF 2007
WITH
CIVIL APPLICATION NO.391 OF 2007

Abasaheb Maruti @ Balbhim More-Patil. ..Appellant.

V/s.

Kashiram S. More-Patil & Ors. ..Respondents.

WITH

SECOND APPEAL NO.186 OF 2007
WITH
CIVIL APPLICATION NO.404 OF 2007

Abasaheb Maruti @ Balbhim More-Patil. ..Appellant.

V/s.

Balasaheb A.More-Patil & Ors. ..Respondents.

Mr.Sandesh Patil i/b.Prashant P. Jadhav for appellant.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 9, 2007.

P.C. :

1. Heard counsel for the appellant.

2. No substantial question of law arises for consideration in these appeals.

3. The argument of the appellant that the view taken by the appellate Court suffers from nonconsideration of relevant evidence and documents

on record on the part of the defendants, cannot be countenanced.

4. On going through the discussion of the appellate Court, no fault can be found with the ultimate conclusion reached by the appellate Court. The argument that the admissions of the defendants would affect the claim of the defendants of theory of partition in 1936 also does not commend to me. I have perused the relevant admissions of defendant brought to my notice. None of the admissions would materially affect the stand of the defendants about theory of partition effected in 1936. The argument of the appellant that the admission of the defendants that land Gat No.16 was ancestral property, also will have to be stated to be rejected. It is not an admission of the fact that the suit property was ancestral property as such. All that the defendant states in the evidence is that he has no record to support his claim, at page 66 in paragraph-7 and 8 of the evidence. The Court below has considered the relevant evidence on record and after appreciating documents as well as oral evidence has accepted the theory of partition of the defendants as pressed into service by the defendants. There is no reason to depart from the said conclusion. Some error here or

there committed by the appellate Court cannot be the basis to interfere with such finding and to entertain second appeal. Once that finding is upheld, other reasons recorded by the Court below will fall in place. In as much as, the court below has found as of fact that the land bearing Gat No.97 has been given to Apparao by virtue of his service and office of Police Patil after 1935. Similarly, Gat No.345 has been purchased by the defendants on 16th April, 1945. The same is the finding with regard to the house property. The same is purchased by the defendant No.1 after 1935. In such a case, the argument that the said properties have been purchased from the nucleus of joint family property is also unavailable. The Court below has also taken into account that the plaintiff was in exclusive possession of the Gat No.96 by virtue of partition to the extent of five acres. The original Gat No.96 owned by the predecessor of the parties was 40 acres, out of which 28 acres was sold to Manikchand Raichand Shah by the predecessor of both the parties. On account of that transaction, only 12 acres were available for partition at the relevant time from Gat No. 96. Out of 12 acres, 5 acres and 24 gunthas have been allotted to the plaintiff, in respect of which mutation entry has been effected. The evidence

establishing the fact that the plaintiff is in exclusive possession of the suit land since then. It is in this context the appellate Court has observed that the plaintiff cannot be heard to make grievance after over 35 years, particularly when he attained majority in the year 1956 itself.

4. Be that as it may, all these arguments are only in the nature of persuading the Court to reappreciate the evidence on record. No substantial question of law arises for consideration in these appeals. Hence dismissed.

5. In view of this order, nothing survives for consideration in the respective civil applications. Accordingly, the same are disposed of accordingly.